

Section I (Remarks)**A. Applicant's Summary of Examiner Interview Conducted on August 23, 2007**

The undersigned extends appreciation to the Examiner for granting an in-person Examiner Interview on August 23, 2007. Although no agreement was reached with respect to patentability of the claims, it was helpful to discuss various issues presented by the application.

At the interview, the undersigned provided a *draft* Declaration of Wayne A. Calco Under 37 CFR 1.132 (with paragraphs 1-19 thereof being identical to the document of the same title submitted herewith). The undersigned discussed the substance of Mr. Calco's draft declaration with respect to the rejections under 35 U.S.C. § 132(a). The Examiner indicated that he would carefully consider such a declaration upon formal submission of same, and that he would re-evaluate the propriety of the rejections under 35 U.S.C. § 132(a) thereafter.

Regarding the claim rejections under 35 U.S.C. 103, the undersigned and the Examiner agreed that U.S. Patent No. 2004/0224638 to Fadell ("Fadell") appeared to represent the prior art of record closest in character to the subject matter of the claims, but that Fadell alone did not disclose all of the limitations of the pending claims.

The undersigned stated that objective (or "secondary") considerations evidence already made of record (e.g., in the (first) Declaration of Jeff Grady under 37 CFR 1.132) demonstrates non-obviousness of the claimed invention over Fadell and the other cited references. The undersigned further pointed out that Applicant's prior response filed on April 24, 2007 included detailed discussion and arguments regarding evidence of secondary considerations of non-obviousness, but that the July 13, 2007 Office Action failed to address or even mention such evidence.

The Examiner stated that he was not familiar with any situation in which any examiner of the USPTO has ever allowed a patent application based on secondary considerations of non-obviousness, and that he would not allow the instant application based on the secondary considerations evidence made of record. When queried by the undersigned, the Examiner indicated that he was familiar with situations in which the Board of Patent Appeals and

Interference had been persuaded by secondary considerations evidence and overruled obviousness rejections made final by examiners, and suggested that Applicant should file a Notice of Appeal if Applicant seeks to rely on secondary considerations evidence.

The undersigned accordingly communicated Applicant's intention to appeal the instant application to the Board of Patent Appeals and Interferences if necessary.

B. Response to Claim Rejections Under 35 U.S.C. § 132(a)

In the July 13, 2007 office Action, the Examiner objected to the following amendment to the disclosure at the second paragraph of page 8: "*further provided are control elements 17A, 17B of which one control element may be employed for frequency tuning control,*" as purportedly containing new matter.

In support of the new matter objection pertaining to such amendment, the Examiner stated:

The original specification does not disclose that one of the raised cylindrical knobs (now labeled 17A and 17B) is for frequency tuning control. In addition, the original specification discloses that the frequency tuning control element is located in the modular docking unit (see original claim 13). Since the raised cylindrical knobs (now labeled 17A and 17B) are located outside of the modular docking unit (see figure 1), they are clearly not for frequency tuning control.

(July 13, 2007 Office Action, pages 2-3 (emphasis in original))

Since volume control could also be used, the two raised cylindrical knobs may be used for volume control purposes, wherein a first knob is used for controlling volume of the right speaker, and a second knob for the left speaker. **For that reason, one of the control elements 17A and 17B does not have to be the frequency tuning control as alleged by applicant.**

(July 13, 2007 Office Action, page 11 (emphasis in original.))

All of Applicant's prior arguments contained in the Response filed on April 24, 2007 responsive to the same rejection under 37 CFR 1.132(a) are hereby incorporated by reference as if fully set forth herein. Applicant hereby supplements the arguments made in its April 24, 2007 Response as provided below.

Enclosed herewith for entry into the prosecution record of the instant application is an executed Declaration of Wayne A. Calco Under 37 CFR § 1.132. Mr. Calco has a bachelor's degree in Industrial Design and substantial experience in designing consumer electronic devices (Calco Declaration, ¶¶ 1-6). Mr. Calco is a long-standing enthusiast of consumer electronic products generally, and especially Apple iPod devices. (Id., ¶ 7.) Consistent with his profession as a product designer and an enthusiast of consumer electronic devices, for many years Mr. Calco has kept himself well-informed regarding new consumer electronic products. (Id., ¶¶ 7-8.) Based on his education and experience, Mr. Calco possesses a level of ordinary skill in the art in human interfaces for consumer electronic devices sufficient for him to offer testimony helpful to assess and interpret the disclosure of U.S. Patent Application No. 10/780,329 and how it would be perceived by one of ordinary skill in the art. (Id., ¶¶ 1-8.)

With respect to the disputed cylindrical knobs, Mr. Calco characterizes the instant application as follows:

U.S. Patent Application No. 10/780,329 was filed with three drawings, as copied in Exhibit A hereof. Each figure shows an audio player assembly, configured as a boombox with two speakers, configured to receive and operate with a portable digital media storage and playback device (e.g., an iPod® portable digital media storage and playback device). The audio player assembly illustrated in Figures 1-3 includes two raised cylindrical knobs positioned along the front of the player assembly. The raised cylindrical knobs are placed within direct view and easy grasp a user of the audio player assembly. The approximate size of each raised cylindrical knob may be inferred by comparison and reference to the iPod device illustrated as docked with the audio player assembly. The size, shape, and placement of each raised cylindrical knob are consistent with the use of such cylindrical knob as a control element to be grasped and operated by a user. The figures illustrate a “modular docking unit 16” having defined therein a docking cavity for docking a MP3 player 18. Each raised cylindrical knob is disposed outside the modular docking unit 16. The foregoing facts would be apparent to one of ordinary skill in the art upon review of the drawings and written description of U.S. Patent Application No. 10/780,329.

The original text of U.S. Patent Application No. 10/780,329 discloses a “frequency tuning control,” for example, at page 4, the second full paragraph, and at page 11 (i.e., within original claim 13), specifically referring to a “frequency tuning control.” The second full paragraph of page 4 of the application is reproduced below:

Such modular docking unit may comprise various functional elements, including but not limited (a) means for retaining the MP3 player in position in the docking cavity; (2) coupling means for connection with an audio out port of the MP3 player, for receiving the audio signal therefrom; (3) amplifier for amplifying the received audio signal before such signal is outputted by the speaker; (4) power/charging circuitry for charging the MP3 player docked therein; (5) indicator lights for indicating the operational state of such unit (e.g., “charged” indicating that the unit is charging the battery of an MP3 player docked therein); (6) frequency tuning control and/or frequency indicator, etc.

(Emphasis added.) Moreover, original claim 13, as depending from original claim 2, which depended from original claim 1, is reproduced below with original claims 1 and 2 for context:

1. An audio player assembly comprising:
 - (a) an MP3 player; and
 - (b) an audio player unit comprising at least one speaker and optionally an FM receiver operatively coupled with the speaker, wherein said audio player unit is operatively connected with the MP3 player for receiving an audio signal produced by the MP3 player and for outputting said audio signal through the at least one speaker thereof.
2. The audio player assembly of claim 1, wherein said audio player unit comprises an [*sic*, a] modular docking unit having a main body portion with a docking cavity therein for docking said MP3 player.

* * *

13. The audio player assembly of claim 2, wherein the modular docking unit comprises a frequency tuning control on the main body portion.

(Calco Declaration, ¶¶ 11-12.)

As indicated by Mr. Calco, the second full paragraph at page 4 of the present application uses the optional term “may” in describing that a “modular docking unit may comprise ... [a] frequency tuning control.” (Calco Declaration, ¶ 13.) Based on the use of the phrase “may comprise” in this context (which signifies “might comprise” or “could comprise”), one of ordinary skill in the art at the time the invention was made would understand that a frequency tuning control need not

necessarily be incorporated into a modular docking unit. (Id.) Such idea is reinforced by illustration of raised cylindrical knobs (which would be immediately recognizable by one skilled in the art as control elements) outside of the modular docking unit in each of drawing figures 1-3 as originally filed. (Id.) Therefore, upon review of the original written description in combination with the originally-filed drawings, one of ordinary skill in the art at the time the present invention was made would readily understand that control elements could be placed outside the modular docking unit – as such possibility was illustrated in the original drawings. (Id.) Moreover, since the only control functions specifically described in the written description relate to frequency tuning control (e.g., at page 4, second full paragraph), one of ordinary skill in the art at the time the invention was made would understand that one of the raised cylindrical knobs or control elements illustrated outside the modular docking unit in figures 1-3 could and would be used for the function of frequency tuning control. (Id.)

Mr. Calco further indicates that **two knobs have been used to control a radio in a standard fashion for decades**. (Calco Declaration, ¶ 15.) In particular, Mr. Calco states:

The use of two knobs to control a radio, **typically with the left knob controlling on/off and volume, and with the right knob controlling frequency tuning, was widely adopted for decades**, prior to the advent of electronic control systems. Such configuration was nearly universal in control of car radios. A user would typically turn on the radio by turning the left knob in a clockwise direction from an “off” position, with further turning of the knob in a clockwise being used to increase volume (and movement in a counterclockwise directly to reduce volume or ultimately turn the radio off). Furthermore, a user would adjust radio tuning frequency by selectively turning the right knob, with clockwise movement used to increase radio frequency and counterclockwise movement used to decrease radio frequency.

(Calco Declaration, ¶ 15 (emphasis added).) Mr. Calco’s declaration includes several examples of radios embodying the foregoing standard dual knob control design – including one example currently on sale (i.e., as of August 2007).

Based on the foregoing, Mr. Calco concludes that “[g]iven the long history and commonality of “dual knob” radio controls including one knob for volume control and the other knob for tuning control, one **of ordinary skill in the art at the time the invention was made would construe the two cylindrical knobs** illustrated in Figures 1-3 and described in the text of U.S. Patent

Application No. 10/780,329 as **embodying (1) a volume control knob, and (2) a frequency tuning control knob, with one knob dedicated for each function.**” (Calco Declaration, ¶ 16 (emphasis added).)

Mr. Calco takes issue with the Examiner’s contention that the “the two raised cylindrical knobs may be used for volume control purposes, wherein a first knob is used for controlling volume of the right speaker, and a second knob for the left speaker” as **failing to comprehend the context of the application as it would be perceived by one of ordinary skill in the art.** (Calco Declaration, ¶ 18.) In particular, Mr. Calco states:

First of all, in my many years of studying product design and in engaging in design of consumer electronic devices, I have never witnessed or heard of a boombox radio with two prominent knobs, where one knob is used for controlling volume of a left speaker and another knob is used for controlling volume of a right speaker. Second, the examiner ignores the long history of “dual knob” radio controls as discussed hereinabove, in which a first knob (typically the left knob) is used for volume control, and a second knob (typically the right knob) is used for frequency tuning control. Third, in a boombox lacking detachable speakers, as apparent from the integrated speaker design illustrated in U.S. Patent Application No. 10/780,329, the relatively close permanent placement of the two speakers leaves little reason to provide independent first and second speaker volume controls. Based on all of these reasons, **one of ordinary skill in the art would not possibly interpret the cylindrical control knobs of U.S. Patent Application No. 10/780,329 to embody a left speaker volume control knob and a right speaker volume control knob as proposed by the Examiner.**

(Calco Declaration, ¶ 18 (emphasis added).)

Mr. Calco’s conclusion regarding the disclosure of the instant application regarding the first and second knobs is stated below:

Based on my education and experience pertaining to human interfaces for consumer electronic devices, my understanding of the history of dual knob radio controls, and my review of U.S. Patent Application No. 10/780,329, the **overwhelmingly most plausible interpretation of the left and right cylindrical control knobs of such application to one of ordinary skill in the art** at the time the invention was made is that **one knob would be used for frequency tuning control, and the other would be used to control volume of both speakers** of the illustrated audio player assembly.

(Calco Declaration, ¶ 19 (emphasis added).)

Based on the foregoing evidence and the arguments made in Applicant's Response dated April 24, 2007, the prior amendment to the disclosure at page 8 thereof, namely: "*further provided are control elements 17A, 17B of which one control element may be employed for frequency tuning control,*" **does NOT constitute new matter**, as such amendment is entirely consistent with how the original disclosure (inclusive of the text and drawings) would be construed by one of ordinary skill in the art. Accordingly, withdrawal of the objection under 35 U.S.C. 132(a) is warranted, and is respectfully requested.

C. Response to Claim Rejections Under 35 U.S.C. § 103

The July 13, 2007 Office Action includes multiple rejections under 35 U.S.C. § 103(a), including:

- a rejection of claims 1, 3, 9-11, 14-18, 22-24, 27, and 30-51 under 35 U.S.C. § 103(a) as being unpatentable for obviousness over U.S. Patent Application Publication No. 2004/0224638 to Fadell ("Fadell") in view of U.S. Patent Re. 33,497 to Honma ("Honma");
- a rejection of claims 4, 5, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable for obviousness over Fadell in view of Honma, and further in view of U.S. Patent Application Publication No. 2002/0106993 to Shealtiel ("Shealtiel");
- a rejection of claims 6 and 21 under 35 U.S.C. § 103(a) as being unpatentable for obviousness over Fadell in view of Honma and Shealtiel, and further in view of U.S. Patent Application Publication No. 2002/0086703 to Dimenstein ("Dimenstein");
- a rejection of claims 52-60 and 62-68 under 35 U.S.C. § 103(a) as being unpatentable for obviousness over Fadell in view of U.S. Patent Application Publication No. 2002/002039 to Qureshey ("Qureshey") and U.S. Patent No. 6,212,327 to Berstis ("Berstis"); and
- a rejection of claim 61 under 35 U.S.C. § 103(a) as being unpatentable for obviousness over Fadell in view of Qureshey and Berstis as applied to claim 52, and further in view of Dimenstein.

Such rejections are traversed.

I. Law Regarding Obviousness

To support a rejection under 35 U.S.C. 103, **the prior art reference(s) must teach all of the limitations of the claims.** MPEP § 2143.03.

In considering a reference for its effect on patentability, the reference is required to be considered in its entirety, including portions that teach away from the invention under consideration. Simply stated, the prior art must be considered as a whole. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (emphasis added); MPEP § 2141.02. “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *Application of Wesslau*, 353 F.2d 238, 241 (C.C.P.A. 1965); *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve*, 796 F.2d 443, 448 (Fed. Cir. 1986), *cert. denied*, 484 U.S. 823 (1987).

According to the recent U.S. Supreme Court decision in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct 1727, 167 L.Ed.2d 705, 82 USPQ2d 1385 (April 30, 2007), the court did not disavow the previous “teaching, motivation or suggestion” or “TSM” test, but stated that such TSM text *should not be strictly applied* in determining obviousness. In connection with this point, the Supreme Court stated that:

“A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art. ... [Rather], it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant art to combine the [prior art] elements in the manner claimed.” *KSR*, 82 USPQ2d at 1389.

It is fundamental to a proper rejection of claims under 35 U.S.C. § 103 that an examiner must present a convincing line of reasoning supporting the rejection. MPEP 2144 (“Sources of Rationale Supporting a Rejection Under 35 U.S.C. 103”), citing *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985). The Supreme Court in *KSR* affirmed the validity of such approach, stating that **“there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”** *KSR*, 82 USPQ2d at 1396.

In *KSR*, the Supreme Court further confirmed that references that teach away from the invention are evidence of the non-obviousness of a claimed invention, (*KSR*, 82 USPQ2d at 1395, 1399) and reaffirmed the principle that a factfinder judging patentability “should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”

2. *Patentable Distinctions of Claims 1, 17, and Claims Depending Therefrom Over the Cited Art*

As indicated previously, claims 1 and 17 (and claims depending therefrom) were rejected under 35 U.S.C. § 103(a) over Fadell in view of Honma. Such independent claims 1 and 17 are reproduced below:

1. An audio player assembly comprising:
 - (a) an MP3 player; and
 - (b) an audio player unit comprising at least one speaker, an FM receiver operatively coupleable with the speaker, and a modular docking unit having a main body portion with a docking cavity therein for docking said MP3 player, wherein said audio player unit is operatively connected with the MP3 player for receiving an audio signal produced by the MP3 player and for outputting a corresponding audible signal through the at least one speaker, wherein the modular docking unit further comprises any of a frequency indicator on the main body portion and a frequency tuning control on the main body portion.

17. An audio player adapted for use with an MP3 player, the audio player comprising:
 - (a) a modular docking unit having a main body portion with a docking cavity therein for docking the MP3 player, and having an associated FM receiver with any of a frequency indicator on the main body portion and a frequency tuning control on the main body portion;
 - (b) a communicating element associated with the main body portion and adapted to communicate audio signals produced by said MP3 player to the audio player; and
 - (c) at least one speaker for outputting audible signals corresponding to audio signals received from any of the FM receiver and the MP3 player.

Applicant's comments regarding Fadell in the Response filed on April 24, 2007 are hereby incorporated by reference as if set forth fully herein.

In the July 13, 2007 Office Action at page 3, the Examiner alleges that Fadell's audio player assembly of Figure 12 discloses a FM receiver operatively coupled with the speaker of figure 12. As indicated in Applicant's prior responses, nothing in Fadell teaches that the speaker dock assembly of Figure 12 includes any FM receiver. Applicant concedes that other embodiments shown in Fadell disclose radio reception utility, but **nothing in Fadell teaches that any speaker-containing assembly having a docking cavity for receiving an MP3 player also contains a FM receiver.** The Examiner is simply picking and choosing disparate elements disclosed in Fadell embodiments having very different structures, very different purposes, and very different intended uses, with the benefit of having read Applicant's patent application, reconstruct the claimed subject matter by applying impermissible **hindsight reconstruction.**

In the July 13, 2007 Office Action at page 4, the Examiner concedes that Fadell fails to disclose a modular docking unit comprising "any of a frequency indicator on the main body portion and a frequency tuning control on the main body portion." The Examiner alleges that Fadell's deficiencies are made up by Honma. Such allegation is misplaced.

Honma is directed to a portable cassette tape player with a radio in the lid. See Honma, Abstract, as reproduced below:

A combination portable magnetic tape cassette player and multiband radio receiver in which the sensitive elements of the radio receiver are arranged within a hinged, plastic cover of the combined apparatus and the circuitry of the radio receiver is formed on a printed circuit board having an AM band antenna mounted thereto, whereby the AM receiver antenna is electromagnetically unshielded by the plastic cover and the combined tape player and radio receiver is of a size substantially equal to that of the tape player alone.

The Examiner asserts at page 4 of the Office Action that:

Honma discloses an audio player assembly having a modular docking unit 2 (see figures 1-3) wherein the modular docking unit comprises any of a frequency indicator 65 on a main body portion and a frequency tuning control 63 on a main body portion (see column 4, lines 54-65; column 6, lines 6-16).

Review of Honma, however, reveals that the element bearing identification number 2 is in fact "**a cover 2**" (Honma, col. 3, line 21). **Nothing in Honma teaches or remotely suggests any docking utility, let alone any modular docking unity.**

Honma recognizes that combination radio and tape players were well known in the art. Such a combination radio/tape player is preferably very small in character (e.g., sized to fit in a user's pocket) and utilizes headphones for personal listening. (Honma, col. 1, lines 19-25). The motivation behind Honma's invention is to keep the bar or rod antenna of the radio receiver (which may include a ferrite rod) spatially separated from the metallic drive components of a tape player. (Honma, col. 2, lines 2-9.)

Fadell, on the other hand, relates to various audio player systems, including one speaker dock assembly adapted to physically receive a MP3 player (but lacking any radio utility) and reproduce audible signals played by the MP3 player (e.g., in connection with Fadell FIG. 12), and another embodiment in which a media player 402 (e.g., embodying an MP3 player) having an integrated radio frequency transmitter can wirelessly transmit audio signals played by the player 402 for receipt by wireless personal tuning devices 402 (e.g., in connection with Fadell FIGS. 15-18; see Fadell ¶¶ [0096]-[0103], [0113]-[0117]).

Nothing in Honma and/or Fadell teaches the subject matter of independent claims 1 and 17, which require a frequency indicator and frequency tuning control associated with a structure having a docking cavity for docking an MP3 player.

Further dispelling the suggestion that the claimed invention is obvious is the substantial evidence already made of record with respect to objective or secondary considerations of non-obviousness (e.g., in the (first) Declaration of Jeff Grady under 37 CFR 1.132), as discussed in Applicant's prior responses. Applicant's prior comments and arguments relating to secondary considerations of non-obviousness are hereby incorporated by reference as if set forth fully herein.

Despite the Examiner's indication that he would not allow the instant application based on secondary considerations evidence, the Examiner is urged to carefully consider such evidence in allowing the claims of the instant application. It is simply **unconscionable** for the U.S. Patent and Trademark Office to require a patent applicant to suffer the huge delay and expense associated with an appeal because an examiner is not comfortable with applying the law. See MPEP 214, which states:

Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, and skepticism of experts **are relevant to the issue of obviousness and must be considered** in every case in which they are present. **When evidence of any of these secondary considerations is submitted, the examiner must evaluate the evidence.**

(Emphasis added.)

See also *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538, 218 USPQ 871, 879 (Fed. Cir. 1983).

“[E]vidence of secondary considerations may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not.”

It is well settled that evidence of nonobviousness, if presented, cannot be ignored:

In an appeal of a rejection patent application, secondary considerations, such as commercial success, typically do not play a large part in the analysis of obviousness because the inventor usually waits until his patent issues before he swings production into full gear. ... If, however, a patent applicant properly presents evidence relating to these secondary considerations, the Board [of Patent Appeals and Interferences] **must always consider such evidence in connection with the determination of obviousness.**

In re Sernaker, 702 F.2d 989, 217 USPQ2d 1, 7 (Fed. Cir. 1983) (quoting *In re Fielder*, 471 F.2d 640, 644, 176 USPQ 300, 303 (C.C.P.A. 1973))

Based on the foregoing, the Examiner is requested to follow MPEP 214 – namely, to apply the secondary considerations evidence to the pending claims – and responsively allow claims 1 and 17, along with all claim depending therefrom. It is earnestly hoped that appeal can avoided, but if it cannot, then any failure by the Examiner to apply the secondary considerations evidence of record will be used as a primary basis for appeal to the Board of Patent Appeals and Interferences.

3. Patentable Distinctions of Claim 52 and Claims Depending Therefrom Over the Cited Art

In the July 13, 2007 Office Action, independent claim 52 (along with most claims depending therefrom) was rejected under 35 U.S.C. § 103(a) over Fadell in view of Qureshey and Berstis. Claim 52 is reproduced below:

52. An audio player adapted for use with a portable digital media player having a storage medium adapted to receive and store digital media files, the audio player comprising:

- a main body portion having a docking cavity adapted to receive said portable digital media player, wherein the docking cavity includes therein an electrical coupling element adapted to engage the portable digital media player when the portable digital media player is received by the docking cavity;
- an FM receiver adapted to receive audio-containing radio signals from radio stations, the FM receiver having an associated frequency indicator disposed on the main body portion and a frequency tuning control disposed on the main body portion; and
- at least one speaker associated with the main body portion and selectively operable with (1) the FM receiver, and (2) the portable digital media player when received by the docking cavity, to output audible signals.

Again, Applicant's comments regarding Fadell and Qureshey in the Response filed on April 24, 2007 are hereby incorporated by reference as if set forth fully herein.

In the July 13, 2007 Office Action at page 7, the Examiner alleges that Fadell's audio player assembly of Figure 12 discloses a FM receiver operatively coupled with the speaker of figure 12. As indicated in Applicant's prior responses, nothing in Fadell teaches that the speaker dock assembly of Figure 12 includes any FM receiver. Applicant concedes that other embodiments shown in Fadell disclose radio reception utility, but **nothing in Fadell teaches that any speaker-containing assembly having a docking cavity for receiving an MP3 player also contains a FM receiver.**

In the July 13, 2007 Office Action at pages 7-8, the Examiner concedes that Fadell fails to disclose "a main body portion comprising an associated frequency indicator and a frequency tuning control." The Examiner then incorrectly alleges that Fadell's deficiencies are made up by Qureshey and Berstis.

Qureshey discloses a network-enabled audio device consistent with conventional stereo receivers, except for the addition of certain network capabilities. No docking cavity is disclosed. The Examiner relies upon Qureshey because it teaches a frequency tuning control and a frequency indicator on a main body portion. Applicant does not dispute the disclosure of Qureshey in this regard. What Applicant does dispute is any motivation to combine Qureshey with Fadell.

In connection with the speaker dock embodiment of Figure 12, Fadell fails to teach or suggest any FM receiver adapted to receive audio-containing radio signals from radio stations. Accordingly, there exists no reason to add a frequency indicator and frequency tuning control to allow the user to easily visualize the channel to which such FM receiver is tuned. This is consistent with the lack of any frequency indicator or frequency tuning control illustrated or described in connection with the sound system 370 of Fadell FIG. 12 (and with the lack of any frequency indicator or frequency tuning control (or FM receiver) in the Apple iPod HiFi boombox corresponding so closely to Fadell's sound system 370, as detailed in Applicant's Response filed on April 24, 2007). .

Berstis has been cited by the Examiner as disclosing a boom box having speakers and a FM radio receiver. The fact that some prior art boom boxes embodied FM radio receivers is not a revelation to Applicant. Nothing in Berstis teaches or remotely suggests any boom box having a FM radio receiver with associated frequency tuning control and frequency indicator on the main body AND a docking cavity for receiving an MP3 player.

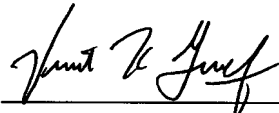
Further dispelling the suggestion that the claimed invention is obvious is the substantial evidence already made of record with respect to objective or secondary considerations of non-obviousness (e.g., in the (first) Declaration of Jeff Grady under 37 CFR 1.132), as discussed in Applicant's prior responses. Applicant's prior comments and arguments relating to secondary considerations of non-obviousness are hereby incorporated by reference as if set forth fully herein.

The Examiner is requested to properly consider and apply the substantial secondary considerations (as required by MPEP 214) and responsively allow the pending claims.

CONCLUSION

Based on the foregoing, all of Applicants' pending claims 1-6, 9-11, 14-24, 27, and 30-68 are patentably distinguished over the art, and in form and condition for allowance. The examiner is requested to favorably consider the foregoing, and to responsively issue a Notice of Allowance. If any issues require further resolution, the examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same.

Respectfully submitted,



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Enclosure:

Declaration of Wayne A. Calco Under 37 CFR § 1.132 [18 pgs]
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